No. 83-214

In the Supreme Court of the United States

OCTOBER TERM, 1983

ONE PARCEL OF LAND IN MONTGOMERY COUNTY, MARYLAND, ET AL., PETITIONERS

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether congressional consent to the interstate compact creating the Washington Metropolitan Transit Authority was a constitutional delegation of authority to use the Federal Declaration of Taking Act, 40 U.S.C. 258a.

2. Whether the district court made a clearly erroneous determination of the amount of interest due the landowner in this case.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 25a-53a) is reported at 706 F.2d 1312. The opinion of the district court (Pet. App. 6a-21a) is reported at 490 F. Supp. 1328.

JURISDICTION

The judgment of the court of appeals was entered on May 4, 1983. The petition for a writ of certiorari was filed on August 1, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners seek review of the judgment entered in a condemnation case brought by Washington Metropolitan Area Transit Authority ("WMATA") to acquire land for the construction and operation of the Washington metropolitan area rapid transit system. On May 21, 1978,

WMATA filed a complaint in condemnation and a declaration of taking condemning certain property located in Montgomery County, Maryland, which was owned by Virginia C. Visnich ("the landowner"). As required by the Declaration of Taking Act, 40 U.S.C. 258a, WMATA deposited in the registry of the court the estimated value of the property as just compensation. The landowner filed a motion to vacate the declaration of taking and for return of the property on the ground that WMATA did not have authority to condemn property under the Federal Declaration of Taking Act, but only had authority to condemn under the general condemnation statute, 40 U.S.C. 257. The magistrate's denial of this motion was affirmed by the district court.

The case was then referred to a commission, pursuant to Fed. R. Civ. P. 71A, which recommended as just compensation an amount in excess of WMATA's initial deposit in the registry of the court. The commission's recommendation was accepted by the district court. The landowner petitioned the district court for an award of interest in excess of the statutory rate of 6% provided in 40 U.S.C. 258a on the amount by which the actual award of just compensation exceeded WMATA's initial deposit.[1] The magistrate awarded interest in excess of the statutory rate by setting annual interest rates for each year during the period in question based on Moody's Composite Index of Yields on Long Term Corporate Bonds.[2] The magistrate's award of interest was affirmed by the district court.[3]

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[1]The landowner specifically requested that interest be awarded at the rate which the initial deposit with the court had actually earned, *i.e.*, 13.5%.

[2]The magistrate set annual interest rates as follows: 1978 at 8.73%; 1979 at 9.63%; 1980 at 11.94%; and January 1981 to date of payment at 14.02%.

[3]The district court rejected the landowner's further argument that if the magistrate's award of interest were utilized, it should be compounded.

The court of appeals affirmed both the district court's denial of the motion to vacate the declaration of taking and its award of interest on the deficiency. The court of appeals first held that congressional consent to the interstate compact creating WMATA transformed the compact into federal law (Pet. App. 38a). It held further that Congress intended to delegate authority to utilize federal condemnation procedures, including 40 U.S.C. 258a (Pet. App. 42a), and that that delegation satisfied the constitutional requirements of just compensation (Pet. App. 48a-50a). Turning to the interest question, the court of appeals held that "[t]he choice of an appropriate rate of interest is a question of fact, to be determined by the district court" which "will be upset only if it reaches a clearly erroneous result" (Pet. App. 52a). Finding that the selection of annual rates based on Moody's Index approximates the return which a reasonably prudent person would receive if the funds were invested so as to produce a reasonable return while maintaining safety of principal (Pet. App. 52a), the court of appeals concluded that the district court's award of interest using Moody's Index should not be disturbed.

ARGUMENT

The decision of the court of appeals is correct, does not conflict with any decision of this Court or any other court of appeals, and does not warrant review by this Court.

1. Petitioners argue (Pet. 5-15) that WMATA does not have the authority to condemn property under the Federal Declaration of Taking Act, 40 U.S.C. 258a.

a. Petitioners primarily argue that congressional consent to an interstate compact transforms the compact into federal law only to the extent that such consent gives federal courts jurisdiction to interpret the compact. That position is clearly inconsistent with this Court's holding in *Cuyler* v. *Adams*, 449 U.S. 433 (1981). In holding that the Interstate

Agreement on Detainers is "an interstate compact approved by Congress and is thus a federal law subject to federal rather than state construction" (449 U.S. at 438), the Court made the effect of congressional consent to compacts within the Compact Clause unmistakably clear:

> Because congressional consent transforms an interstate compact within this Clause into a law of the United States, we have held that the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question.

Ibid. Congressional consent does not merely make "the interpretation of an interstate compact * * * a question of federal law" as petitioners suggest (Pet. 10); instead, its interpretation is a federal question precisely *because* congressional consent transforms the compact into federal law. As the court of appeals observed (Pet. App. 40a), *Cuyler* itself belies petitioners' interpretation of this Court's position. In *Cuyler*, this Court held that the Interstate Agreement on Detainers was a substantive federal law whose violation may be remedied by an action under 42 U.S.C. 1983. 449 U.S. at 450. See also *Texas* v. *New Mexico*, No. 65, Orig. (June 17, 1983), slip op. 9 (congressional consent effects "metamorphosis" of interstate compact into federal law).

Petitioners are correct in observing (Pet. 6) that no prior case has held that congressional consent to a compact effects a delegation of federal power to the authority created by the compact. However, that fact alone does not justify an exercise of certiorari jurisdiction, since the decision below is simply a correct application of this Court's holdings in *Cuyler* and other cases, and is completely consistent with the decisions of other courts of appeals on the effect of congressional consent to interstate compacts. See *Texas* v. *New Mexico, supra* (no court may order relief inconsistent

with compact terms unless compact itself is unconstitutional); *Pennsylvania* v. *Wheeling and Belmont Bridge Co.*, 54 U.S. (13 How.) 518 (1851) (federal remedy exists for violation of congressionally sanctioned compact); *West Virginia ex rel, Dyer* v. *Sims*, 341 U.S. 22 (1951) (state court determination that interstate compact invalid on state constitutional ground subject to Supreme Court review); *League to Save Lake Tahoe* v. *Tahoe Regional Planning Agency*, 507 F.2d 517 (9th Cir. 1974), cert. denied, 420 U.S. 974 (1975) (federal court has jurisdiction to issue injunction requiring compliance with interstate compact); *United States ex rel. Esola* v. *Groomes*, 520 F.2d 830 (3d Cir. 1975) (Interstate Agreement on Detainers is law of the United States, the violation of which is grounds for *habeas corpus* relief); *Echevarria* v. *Bell*, 579 F.2d 1022 (7th Cir. 1978) (same).

The holding of the court of appeals is mandated by the federal and interstate interests in WMATA's ability to exercise the federal declaration of taking power. The compact creating WMATA was initiated at the urging of Congress to provide mass rapid transit in the Washington metropolitan area. Although most of that transit system is in the District of Columbia, significant parts of it run into Maryland and Virginia. WMATA's actions thus have a substantial impact on interstate commerce and would have been an appropriate area for affirmative legislative action, even if the District of Columbia were not a signatory.[4] Moreover, Congress clearly intended WMATA to exercise federal condemnation powers when it consented to the compact that

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[4]Article I, Section 8, Clause 17 of the U.S. Constitution gives Congress the authority "[t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States * * *."

granted WMATA the authority to condemn property "pursuant to the provisions of * * * [40 U.S.C. 257] or any other applicable act." Section 82(b), WMATA Compact (80 Stat. 1351). The court of appeals was obviously correct in holding that there was "no reason why this intent should be frustrated simply because it is expressed in consent legislation rather than in an affirmative Act" (Pet. App. 42a-43a).

b. Petitioners also argue (Pet. 12-15) that the court's holding that WMATA is authorized to use the Declaration of Taking Act is inconsistent with this Court's decisions and amounts to an approval of unconstitutional procedures since WMATA has not pledged public faith and credit for payment of an award of just compensation (Pet. 12-14).

We note initially that the issue here involves only payment of any shortfall between estimated just compensation and the eventual award by the district court, because the Declaration of Taking statute requires WMATA to deposit the estimated amount of just compensation with the district court at the time of filing the declaration of taking. Moreover, petitioners do not suggest that there was any difficulty in this case in recovering the shortfall between the amount deposited with the district court and the district court's eventual award.

Contrary to petitioners' contention (Pet. 14), this Court has never held that a pledge of public credit is necessary to make the exercise of "quick take" authority constitutional.[5] When this Court first addressed the constitutionality of this

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[5]The cases cited by petitioner stand instead for the proposition that an assumption on the part of the government of the duty to make prompt payment of the ultimate award of just compensation is one way in which "the duty to provide for payment of compensation may be adequately fulfilled," *Crozier* v. *Krupp*, 224 U.S. 290, 306 (1912), or "the requirement of just compensation * * * satisfied." *Joslin Manufacturing Co.* v. *Providence*, 262 U.S. 668, 677 (1923).

type of procedure, it held that if compensation is not paid before the property is appropriated

> an appropriate remedy must be provided, and upon an adequate fund; whereby [the landowner] may obtain such compensation through the medium of the courts of justice if those whose duty it is to make such compensation refuse to do so.

Sweet v. *Rechel*, 159 U.S. 380, 406 (1895) quoting *Bloodgood* v. *Mohawk and Hudson Rail Road Co.*, 18 Wend. 9, 18 (N.Y. 1837)). In its most recent pronouncement, this Court held that

> the taking of property for public use by a State or one of its municipalities need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment, and there is adequate provision for enforcing the pledge.

Joslin Manufacturing Co. v. *Providence*, 262 U.S. 668, 677 (1923).

The court of appeals properly applied these tests to this case. WMATA is not a federal or state agency, but is a unique creature created by interstate compact. That compact requires, in Section 82(c), that WMATA must bear all liabilities incurred as a result of its condemnation activities (80 Stat. 1351). As a result, it may not pledge any public credit to payment of just compensation. Nevertheless, as the court of appeals recognized, there is "an appropriate remedy," *Sweet* v. *Rechel, supra*, 159 U.S. at 406, and "an adequate fund" (*ibid.*) whereby just compensation could be obtained if WMATA refused to pay any deficiency between the estimated amount of just compensation deposited with the court and the actual award. WMATA's filing under 40

U.S.C. 258a vests the right to compensation in the landowner. Section 82(c) of the compact specifically states that any award for property condemned shall be paid by the Authority. WMATA may sue and be sued (Section 12(a), WMATA Compact (80 Stat. 1328)), and owns substantial assets, which a landowner could attach to satisfy any judicially determined liability. Accordingly, the constitutional requirements of just compensation are met, for in the words of the court of appeals, "just compensation is, to a virtual certainty, guaranteed" (Pet. App. 49a).

2. Petitioners also argue (Pet. 15-18) that in order to fulfill the requirements of just compenstion, the district court was requried to award interest on any shortfall between the initial deposit with the court and the actual award at a rate at least equal to the rate that the landowner earned on the initial deposit while it was held by the court.[6] Petitioners' argument is without merit.

a. Petitioners incorrectly characterize (Pet. 16) the issue before the Court as one requiring a construction of "the nature and sufficiency of the 6% interest rate" that 40 U.S.C. 258a provides shall be paid on any shortfall. The district court awarded the landowner interest on the shortfall at varying annual rates between 8.7% and 14% — all of which were well above the 6% statutory rate. The question that is properly before this Court is thus whether courts may employ any reasonable formula in calculating what interest on a shortfall meets the requirement of just compensation.

b. Petitioners imply (Pet. 17) that the district court's award of interest in this case is in conflict with decisions of other courts of appeals. This is simply incorrect. In fact, the

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[6]At the request of the landowner, the district court ordered the clerk to invest the deposit in the registry of the court in 90-day Treasury bills. As the bills became due, the funds were reinvested. The interest thus earned was equivalent to an annual rate of 13.5% (Pet. 4).

district court faithfully applied a method for determining interest adopted by the Court of Claims in *Pitcairn* v. *United States*, 547 F.2d 1106 (Ct. Cl. 1976), cert. denied, 434 U.S. 1051 (1978), and followed by that court in subsequent cases. See *Tektronix, Inc.* v. *United States*, 575 F.2d 832, 836 (Ct. Cl.), cert. denied, 439 U.S. 1048 (1978); *Miller* v. *United States*, 620 F.2d 812, 838-840 (Ct. Cl. 1980). This method uses simple interest rates based on changes in investment yields using Moody's Composite Index of Yields on Long Term Corporate Bonds. The court of appeals correctly held that use of this method justly compensated the landowner (Pet. App. 52a-53a).

A different method for determining interest rates on shortfalls has been endorsed by the Court of Appeals for the Ninth Circuit. *United States* v. *Blankinship*, 543 F.2d 1272 (9th Cir. 1976). However, in *United States* v. *429.59 Acres of Land, et al. (Imperial Beach)*, 612 F.2d 459, 465 (9th Cir. 1980), that court explained that an interest rate is appropriate if it is equivalent to what " 'a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal' would receive."[7] The Ninth Circuit also approved compounding of interest in *Imperial Beach*, in order to reach fair compensation in that case; it did not suggest that compounding is always required.[8]

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[7]The *Imperial Beach* court emphasized that "*United States* v. *Blankinship* * * * does not require the application of any fixed formula for interest rate determinations in condemnation cases." 612 F.2d at 465.

[8]In *Imperial Beach*, simple interest of 6.635% was compounded to arrive at a rate equivalent to 7.4% simple interest. Similarly, *United States* v. *319.46 Acres, Situate in Cotton and Jefferson Counties*, 508 F. Supp. 288 (W.D. Okla. 1981), relied on by petitioner, approved the compounding of an interest rate of 8.48%. In no case in which compounding has been approved has the Court of Claims' formula been used.

Clearly, courts have endorsed different methods for determining an interest rate that will result in fair and just compensation. However, the choice of different methods does not represent a conflict among the circuits and does not merit review by this Court.

c. Petitioners' further argument (Pet. 18) that the district court was required to award the landowner the same interest rate which she received on the original deposit in the registry of the court does not warrant consideration by this Court. No court has ever held that just compensation is determined simply by looking to the *actual* interest earned by a landowner's investments during the period within which just compensation is being determined. Thus, the district court's refusal to use that rate is entirely consistent with established principles used to determine just compensation. The district court's judgment that awarded the landowner interest at rates ranging annually from 8.7% to 14.02% clearly approximated the return to be expected by " 'a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal,' " *Imperial Beach, supra*, 612 F.2d at 465. That award was thus not clearly erroneous, and the court of appeals quite correctly affirmed it. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 286-287 (1982).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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